

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2805 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No.

RAJKOT MUNICIPAL CORPORATION

Versus

MANUBEN RAMSING

Appearance:

MR DB MEHTA FOR MR. BP TANNA, Senior Advocate for Petitioner
MRS SANGEETA PAHWA FOR MR. PM THAKKAR for the
Respondent.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/04/96

ORAL JUDGEMENT

This Special Civil Application is directed against the Award dated 29.11.1985 passed by the Labour Court, Rajkot in Reference (LCR) No.649 of 1982 whereby the relief of reinstatement with continuity of service and 30% of the backwages was granted in favour of the respondent workman i.e. Manuben Raising.

The case of the petitioner Municipal Corporation is that the respondent was appointed to serve the water in terms of the order dated 2.1.1973 passed by the Chief Officer. Rajkot Municipality for the period from 27.1.1973 to 26.2.1973 as per Annexure 'A'. It further appears from the document (Page 20) in the Special Civil Application that some order was passed on 15.2.1973 by which the respondent workman's appointment was extended upto 26.6.1973 and the same was further extended for a period of six months from 26.6.1973 and the respondent had thus worked from 27.1.1973 to 27.12.1973. Thereafter she had again worked from 2.4.1974 to 1.9.1974 and in this regard a reference may be made to the orders available at page 19. Under this order dated 29.3.1974 available at page 19 an appointment was given for a period of three months from 2.4.1974 but the same was further extended by an order dated 2.7.1974 available at page 18 as her services were terminated on 2.9.1974 according to the corporation.

The respondent gave notice to the corporation on 22.2.1979 against her retrenchment from 2.9.1974 and thereafter on 11.2.1982 made a complaint before the Labour Officer and a reference was made in the year 1982. This dispute has been adjudicated by the Labour Court, Rajkot and the award granting relief of reinstatement with continuity of service and 30% of the backwages has been passed.

The award shows that the Labour Court came to the finding that the respondent had worked with the corporation from 27.7.1973 to 28.12.1973 and thereafter again from 2.4.1974 to 1.9.1974 and the corporation did not lead any oral evidence. The respondent had led the evidence before the Labour Court, proved the period of her working as aforesaid with the corporation and that her services were terminated without payment of notice pay and the retrenchment compensation. She also stated that from 28.12.1973 to 31.3.1974 no work was taken from her. The Labour Court came to the finding that she had worked for a period of more than 240 days and was entitled to the protection of section 25-F of the Industrial Disputes Act and her services had been terminated without giving the benefits under section 25-F and in breach of the provisions of section 25-F of the Act by the Corporation. The Labour Court also held that there was no evidence that juniors to her were continued after her termination but held that the retrenchment was unlawful and the relief of reinstatement with continuity of service was granted by the Labour Court and keeping in view the fact that she herself had allowed the time

period from September, 1974 to 22.2.1979 and thereafter till 11.2.1982 to lapse and thus remaining idle for a period of nearly about seven and half years, out of the total period over 11 years between 2.9.1974 to 29.11.1985, 30% backwages were granted.

Mr.Mehta has argued that respondent had not worked for 240 days and that it was not a case of unlawful retrenchment. Looking to the period and working of the respondent from 27.1.1973 to 27.12.1973 i.e.335 days in the year 1973 and again 173 days in the year 1974 from 2.4.1974 to 1.9.1974 and keeping in view of the provision of section 25-B of the I.D.Act, the finding of the Labour Court that it was reasonable to believe that the respondent had worked for a period over 240 days does not warrant any interference and hence she was rightly held to be entitled to the protection of section 25-F of the I.D.Act. It cannot be said that it was not a case of unlawful retrenchment as per the provision of law with regard to the retrenchment which was in force at the time when she was retrenched in September, 1974 and the Corporation cannot take the benefits of the amendment brought about in section 2(oo)(bb) of the I.D.Act subsequently. On these facts the position being clear that the requirements of section 25-F had not been followed, the relief of reinstatement with continuity of service does not warrant any interference.

So far as the question of backwages is concerned the Labour Court has already taken into consideration that out of the total period over 11 years from the date of termination till the date of the award the respondent herself was responsible for a period nearly seven and half years and therefore by taking reasonable proportion only 30% of the backwages have been granted and this amount of 30% of the backwages has been credited and withdrawn by the respondent as the same had been deposited by the petitioner corporation in terms of the interim order dated 22.5.1986 whereby the ad-interim relief against the reinstatement was granted on the condition that the petitioner pays 30% of the backwages awarded by the Labour Court. Thus the relief of 30% of the backwages also does not warrant any interference.

Mr.Mehta appearing for the petitioner corporation submits that whereas the reinstatement had remained stayed under the orders of this Court and now if this petition is allowed the petitioner corporation will have to pay full wages for the period from which she became entitled to reinstatement under the award till the date

she is reinstated and that period will be more than 10 years. In dealing with the challenge of the impugned award dated 29.11.1985 this Court is not concerned for the period subsequent to the award. Whereas the award in respect of the reinstatement has remained stayed under the orders of this Court, it is made clear that in case the respondent seeks to enforce the wages for the period from the date she was entitled to be reinstated as per the award and till her actual reinstatement now and seeks to file any recovery application for such wages, it will be open for the petitioner corporation to show in such proceedings for recovery as to whether the respondent has earned any wages by any gainful employment during this period and it will be open for the concerned court to pass appropriate orders accordingly in case the Municipal Corporation does not accept the claim of the respondent for full wages for the period when she became entitled to reinstatement under the award till the date she is actually reinstated now.

Upshot of the aforesaid discussion is that this Special Civil Application fails and the same is hereby dismissed. Rule is hereby discharged and the interim order dated 22.5.1986 automatically ends. No order as to costs.
